

# **DRAFT**

## **TRANSITION ADVISORY COMMITTEE**

April 20, 2000 - MSU, Billings  
Original Minutes with Attachments

### **COMMITTEE MEMBERS PRESENT**

Sen. Fred Thomas, Chair  
Rep. Joe Quilici, Vice Chair  
Rep. Tom Dell  
Sen. Steve Doherty  
Rep. Stanley Fisher  
Rep. Royal Johnson  
Sen. J. D. Lynch  
Sen. Walter McNutt  
Rep. Ray Peck  
Sen. Mike Sprague

Bob Anderson  
Ed Bartlett  
Neil Colwell  
Paul Farr  
Kathy Hadley  
Bob Nelson  
Don Quander  
Roma Taylor  
Dave Wheelihan

### **COMMITTEE MEMBERS EXCUSED**

Sen. Bill Wilson  
Rep. Ernest Bergsagel  
Gene Leuwer  
Art Compton

### **STAFF MEMBERS PRESENT**

Stephen Maly  
Todd Everts  
Judy Keintz, Secretary

### **VISITORS' LIST**

**Attachment #1**

### **COMMITTEE ACTION**

Approved the minutes of the February 17, 2000 meeting.

Agreed to provide a briefing packet regarding clarifying the authority of the PSC to legislators prior to the upcoming special session.

Set next meeting date for June 23, 2000.

## **I     OPENING REMARKS**

CHAIRMAN THOMAS called the meeting to order at 9:00 a.m. Roll call was noted; SEN. BILL WILSON, REP. ERNEST BERGSAGEL, GENE LEUWER, and ART COMPTON were excused,  
**Attachment 2.**

### **Staff Budget Update**

MR. MALY remarked that the TAC has been authorized to spend up to \$100,000. At the last meeting, the TAC passed a motion to reduce this amount to \$75,000. To date \$50,000 has been received from the Montana Power Company and \$5,000 from PP&L. Expenditures to date are \$23,000.

## **II SALE OF MONTANA POWER COMPANY'S GAS AND ELECTRIC SYSTEM**

### ***Overview of Properties & Assets for Sale by MPC Representatives***

**Jack Haffey, Montana Power Company (MPC)**, stated that Montana is on the right path with electrical and natural gas restructuring. The restructuring acts had nothing to do with MPC's decision to separate MPC's energy and telecom businesses. The businesses are different fundamentally. People invest in the telecommunications business for growth and in electric and natural gas utilities for income. The management attention necessary for the energy business takes needed attention away from acting on the growth opportunities offered by the telecommunications business.

The decision to separate energy and telecom was made after months of discussion at the board level and the senior policy officer level without outside assistance. Divestiture allows their company to have a sharper focus on telecom and will enable their energy businesses to grow under new ownership. Their energy businesses are unable to act out the energy opportunities within the corporation that are otherwise available by separation from the telecom business. Their current investor profile is composed of people who have invested in the telecommunications business.

They are currently preparing an information memorandum that describes their energy businesses. Goldman Sachs will be helping them move the process to completion. Preliminary, confidential indications of interest will be requested. Second round participants will be identified and qualified buyers will be chosen. Proposed stock acquisition agreements will be distributed. Filings, proceedings and discussions will be held with FERC and the Public Service Commission (PSC). A special shareholder meeting will be noticed and a shareholder vote will be conducted. The entire process should take between six and twelve months.

The PSC has the authority to ensure that utility service will not be discontinued and that a ready, willing, and able successor will conduct utility delivery service in Montana in a safe and reliable manner. The

MPC shareholders will have to authorize the transaction that enables them to sell the MPC. Touch America will become the parent company of the MPC.

All of the proceeds from the sale of the stock will go to the investors. There has been a related question regarding a premium that might be paid for the utility businesses. If there is a premium, it will go to the investors. The PSC is not required to include the premium in the rates of the successor company and the transaction will not change the rates. The transaction will transfer the ownership of the MPC utility and the tariff will be unchanged. If the new owner wants to include recovery of a premium in rates, the PSC has the discretion to decide whether or not this should be included.

The electrical industry is in transition. There is activity at the federal level that will rearrange the institutional network of high voltage electric transmission systems in the nation to ensure that willing sellers and willing buyers are able to operate efficiently.

#### **Questions from the Committee**

SEN. LYNCH remarked that the employees in Butte have a lot of concerns and the future. The employees feel terribly threatened.

**Mr. Haffey** explained that there are approximately 920 employees in the transmission and distribution businesses of the MPC. Most of those employees are operating employees. These are the people who know the system and it is expected that the new owners will want these employees to work for them. The MPC has right-sized their workforce. Very little change is expected around the divisions. In Butte, the question becomes more pointed. They are working hard to ensure opportunities with the successor company and, if necessary, severance pay.

REP. QUILICI stated that he had been contacted by retirees concerned about their benefits. **Mr. Haffey** maintained that those plans are covered by federal law and there should be no adverse effect.

REP. QUILICI questioned whether the 401k plans that were in stock would be affected. **Mr. Haffey** stated this stock would not be affected. The owners of the MPC shares will become owners of Touch America shares. Individuals can make any changes they desire with their shares.

REP. DELL requested more information regarding finding a qualified buyer. He questioned whether the legislative body could be involved in the process. **Mr. Haffey** explained that the legislature has given the PSC the authority to ensure that any buyer of a utility will be one who can continue to provide safe,

reliable service. This is the public interest standard. The corporation will select a buyer for the MPC's electric and gas utility businesses who is qualified. The criteria used will be the demonstrated ability to operate, maintain, and continue to provide safe, reliable service; financial ability to handle the transaction; reputation for fair dealing with employees, customers, and communities; and ability to close the deal.

REP. DELL questioned whether a buyer could be found who would be willing to go before the PSC to make the determination on whether or not the premium paid on the assets could be recovered. **Mr. Haffey** did not believe this would be a problem. There are many people who have different views about moving the business into the future. Buyers of utility businesses know the general regulatory standards in any state. It is expected that there will be a range of bids.

SEN. LYNCH requested more information about the stock sale. **Mr. Haffey** explained that the MPC will become a subsidiary of Touch America. The Touch America parent corporation will own the stock of MPC. This stock will be sold to the new buyer. The outstanding stock of the MPC, 105 million shares, will be transformed into Touch America stock. Anyone who owns MPC stock at the time of the transaction will, at the close of the transaction, own Touch America stock. The MPC, having been made a subsidiary of Touch America, will be sold to the new buyer. All the other companies are wholly owned subsidiaries, ultimately of the MPC, and they will be sold as part of the whole package or as individual energy businesses. These are not traded shares. The current sole owner is the corporation.

SEN. LYNCH remarked that an act of Congress exempted the Milltown Dam from Superfund considerations. He questioned whether the exemption would transfer to the new owner. **Mr. Haffey** noted that the Milltown Dam, Colstrip 4, and the qualifying facility contracts are all a part of the MPC and would be sold to the new owner. The exemption will transfer to the new owner.

MS. HADLEY questioned whether the management team at MPC had considered working with employees on an employee buyout of the company. **Mr. Haffey** maintained that they reviewed and analyzed many options including an employee buyout. It wasn't a financially feasible option. All the employees currently have a job and this would involve a conflict of interest. This conflict would need to be resolved before they could become involved in the buyout.

SEN. SPRAGUE believed that the current employees would be an asset to the new owner. He questioned the average age of current employees. **Mr. Haffey** claimed that the MPC crews and staff are as good as any in the nation. Training and education of employees will continue. The average age of a lineman is 48. This is an issue with utilities on a nationwide basis.

SEN. DOHERTY question whether there has been a significant new block of investors. **Mr. Haffey** stated that the profile of investors has moved from an income investing profile to a growth investing profile.

SEN. DOHERTY questioned what amount of proceeds would be needed from the sale for the Touch America expansion project. **Mr. Haffey** stated that steps are being taken to expand Touch America in the backbone fiber business as well as the "last mile" distribution business. They are working on a joint venture with US West and separately with the acquisition of Qwest's long-distance business. These projects and unidentified projects can use all the proceeds from the divestiture. The telecom industry is a growing business.

SEN. DOHERTY further questioned why the decision was made to sell stock. **Mr. Haffey** explained that the decision was that Touch America's management and corporation should only be in the telecommunications business. This could best be achieved by selling the stock of the energy businesses.

SEN. DOHERTY noted that if the sale was an asset sale there would be no question as to whether or not the PSC would play a large role in the purchase of the assets. The PSC's role in a stock sale is not clear. He questioned whether the choice of the transaction was influenced by this factor. **Mr. Haffey** claimed that the PSC would not have any more authority if the sale were an asset sale. The authority that the PSC has is to insure that there is no discontinuance of service. The state law is full and complete with regard to public interest.

MR. QUANDER stated his understanding is that the buyer of MPC's utility business will also become the owner of any stranded costs the ratepayers may have to pay to MPC. **Mr. Haffey** clarified that the MPC entity will not change as the result of the transaction. The processing of the cases by the PSC must continue and there must be a fair resolution of stranded costs.

REP. JOHNSON asked whether the offering memorandum would be a public document. **Mr. Haffey** stated that there will be confidentiality agreements required of each party.

REP. JOHNSON questioned whether the document would be available to the PSC. **Mr. Haffey** explained that it would not be available to anyone who has not signed the confidentiality agreement and is not an interested party. The state will be able to address its interest. The public interest that exists in this transaction is assuring that the future utility service is provided in a safe and reliable manner. The

corporation will ensure that any buyer of the MPC is able to do so and this will need to be demonstrated to the PSC. This is the role, scope, and authority of the PSC.

REP. JOHNSON questioned how many people would be affected in the Butte area. **Mr. Haffey** explained that about 80 people work in the general operation of the utility business. The total corporation has 2,490 employees and about 950 are employed in the Butte area.

REP. PECK remarked that there is a feeling by many that this was a master plan. **Mr. Haffey** explained that when SB 390 was passed, not only was the decision to separate the businesses not on their radar scope but the subsequent decision to exit the generation business was also not on their scope. They have since learned how different the telecommunications business is from the energy business. The investor profile and management attention are also very different. Keeping the businesses together does a disservice to each business.

REP. PECK questioned how many stockholders would be included to reach a majority. **Mr. Haffey** agreed to provide this information. Their institutional investors have changed from energy institutional investors to telecom institutional investors. About 13% of the stock is owned by Montanans.

SEN. LYNCH remarked that in regard to the regulated portion of the sale, which should be approximately \$950 million, it has been stated that since improvements were paid for through rate increases, a portion of the above book premium should be returned to the ratepayers. **Mr. Haffey** explained that customers of the MPC paid for a service from the MPC. The customers did not invest in the company and should not receive the rewards, gains or losses, upon a decision to sell the business. All the proceeds should go to the investors. If there is a loss, relative to the book value, the investors receive less than book. Gains or losses go to the investors. All the proceeds go to the owner, which will be Touch America at the time the transaction closes. Montanans have been misled to believe that there is any other rule that should apply.

SEN. LYNCH noted that the MPC is different from most businesses in the fact that they had a monopoly and were guaranteed a level of profit. Comparing a monopoly to a competitive business is comparing apples and oranges. **Mr. Haffey** stated that there is no such thing as a guaranteed rate of return. Regulation exists to establish prices and service standards because there is a monopoly in the area. Whenever the PSC issues an order on prices, there is an opportunity to earn an established rate of return.

SEN. SPRAGUE remarked that the value of the company is greater under deregulation. He questioned the approximate amount that was paid in taxes by the MPC last year. **Mr. Haffey** replied that more than

\$50 million was paid in property taxes by the utility. The corporation paid additional taxes. He added that the increase in the value of the MPC stock over the last three years has been driven by the telecommunications successes. MR. BARTLETT added that in 1998 the consolidated company of MPC paid \$93 million in taxes. The utility division portion was \$73 million.

SEN. DOHERTY questioned why it would be a bad public policy decision for public policy makers to add stock to the authority of the PSC. **Mr. Haffey** remarked that the public interest in utility service is addressed when the standards of safe, reliable service at just and reasonable rates are satisfied. There is no public interest in going beyond that. The suggestion that there is a public interest in reaching into and taking any part of the proceeds that should go to those who took the risk casts an economic cloud over the state. This suggestion could have an adverse effect on the transaction and the taxes that flow to the state.

SEN. DOHERTY noted that the State of Wyoming, and other states, have a statute that specifically allows for PSC overview for divestiture of stock. **Mr. Haffey** claimed that they have reviewed case law in many states that holds that those who take the risk in investing in the enterprise, should receive the reward upon exiting the business.

SEN. THOMAS questioned whether the taxable income received from the stock sale would be different from the taxable income received from the generation sale. **Mr. Haffey** agreed to review the question and provide a response to the Committee.

REP. QUILICI remarked that when the MPC sold its generation assets, the state realized between \$21 million and \$30 million on capital gains taxes. He questioned whether the state would receive any benefits from the stock sale. **Mr. Haffey** agreed to review the question and provide a response to the Committee.

MR. QUANDER stated that in MPC's transition filing with the PSC, the company has asked that ratepayers assume financial risks associated with the Milltown and Kerr Dams, etc. **Mr. Haffey** explained that Milltown and Kerr Dams were offered for sale as part of the generation assets. They were not acquired. This sale was made as a part of a changed nature of the utility business. The generation portion of the former monopoly utility changed in nature from a monopoly service to a competitive service. This changed the reasonable expectation of the utility company to receive a return on that capital. This resulted in stranded costs and stranded benefits.

### **III     REGIONAL TRANSMISSION ORGANIZATION (RTO)**

**Bill Pascoe, Montana Power Company**, provided copies of the “RTO Filing Utilities’ RTO Principles”, **Exhibit 1**, and “RTO Filing Utilities’ Consensus Concerning RTO Form and Structure”, **Exhibit 2**. The Federal Energy Regulatory Commission (FERC) issued Order 2000, described as a voluntary mandate to form RTOs. All FERC jurisdiction utilities must participate in filing an RTO proposal with the FERC by October 15, 2000. The RTOs should be operational by December 15, 2001.

Order 2000 sets forth RTO characteristics. The first characteristic is independence from market participants. The same companies that own the generation should not be involved in controlling access to the transmission grid. Another characteristic is appropriate scope and regional configuration. The wholesale power market that Montana participates in includes the entire Pacific Northwest. The RTOs should also have operational authority over transmission facilities and the authority to maintain short-term reliability.

Eight functions should be included in an RTO: 1) efficient pricing and tariff, 2) congestion management, 3) parallel path flow; 4) ancillary services, 5) OASIS (electronic bulletin board), 6) market monitoring, 7) planning and expansion, and 8) interregional coordination.

The following principles were set out for a Northwest RTO: 1) transmission reliability, 2) customer benefits, 3) open wholesale markets, 4) economic incentives, 5) financial impacts, 6) treaty obligations, 7) characteristics and functions, 8) financial structure, 9) remote utilities, 10) open architecture, 11), non-discriminatory treatment, 12) compliance with FERC’s time lines, 13) public involvement, and 14) retail access.

The form and structure for a Northwest RTOs geographic scope includes the US portion of the Northwest Power Pool plus Nevada Power. The legal structure is a non-profit independent system operator that does not own poles and wires. The governance includes an independent board of directors and a stakeholder advisory board. The transmission facilities to be included will contain at least all the bulk power facilities. A power exchange will not be included.

**Peggy Olds, Bonneville Power Administration (BPA)**, remarked that as a result of input received, the transmission owners have developed a collaborative public process. The entities committed to the October 15<sup>th</sup> deadline are Avista, BPA, Idaho Power, MPC, Nevada Power Company, PacifiCorp, Portland General Electric, Puget Sound Energy, and Sierra Pacific Power.

Work groups have been set up to address pricing, congestion management, transmission facilities in and out of an RTO, etc. Regional forums are being developed on a regular basis across the region on a six-week interval to allow parties to be informed on the latest progress and to air any issues that the other forums may have overlooked. Their internet website is [www.nwrt.org](http://www.nwrt.org).

Slide presentation is attached as **Exhibits 3** and **4**.

MR. DUPREE questioned whether this would be a duplication of efforts already in place. **Ms. Olds** remarked that there clearly is a strong commitment toward a successful filing in October driven by FERC Order 2000, the Administration's position on formation of the RTO, and the commitment of working with all the other IOUs in the region. **Mr. Pascoe** believed that there would be an RTO control center in the northwest that has the overall responsibility for the grid in the region. The RTO center would give directions to local control centers. Added costs will be held to a minimum.

MR. DUPREE questioned the impact on the local control centers. **Mr. Pascoe** maintained there would be a need for local control centers when an RTO was in place. The details still need to be sorted out. **Ms. Olds** stated that one of the primary purposes is to maintain and/or improve reliability.

SEN. DOHERTY questioned whether the RTO would be a federal or state entity. **Ms. Olds** explained that the RTO would be a private, non-profit corporation chartered under one of the states in the region. The independent board of directors will be selected through a search followed by a consensus of the filing utilities.

SEN. DOHERTY questioned how the public interest members would be appointed. **Ms. Olds** claimed that there are a variety of models used by other ISOs for the selection process. In the Desert Southwest Region, there is a stakeholder group of over 100 members who have reviewed interested applicant resumes and forwarded a preferred list of directors to the filing utilities on an unanimous consent document. **Mr. Pascoe** maintained that they will not end up with a situation where the board members are chosen only by the transmission owners. That will not meet the FERC's independence standards.

SEN. SPRAGUE questioned whether the board members would be selected predicated on the supply or demand sectors of the industry. **Mr. Pascoe** explained that the stakeholder groups would represent consumers, generator owners, transmission owners, and public interest.

REP. FISHER questioned why a non-profit designation was chosen for the entity. **Ms. Olds** noted that the BPA is a governmental entity and is prohibited from making a profit on its assets. An ad hoc group of attorneys representing most of the major companies, the BPA, municipalities, and some interest groups, looked at the possible legal structures that would make sense for the region. For the BPA to participate, the non-profit status is essential.

REP. JOHNSON asked what companies would be involved in the RTO. **Mr. Pascoe** clarified that these entities included Avista, BPA, Idaho Power, MPC, Nevada Power Company, PacifiCorp, Portland General Electric, Puget Sound Energy, and Sierra Pacific Power.

MR. DUPREE questioned if sparsely populated states take a back seat during times of rolling brown outs. **Mr. Pascoe** explained that historically, as frequency begins to dip, companies have other frequency relays on their distribution circuits and circuits are opened. In the past, this has been shared on a percentage basis. He did not see this practice changing with an RTO. **Ms. Olds** believed that through an RTO, the independent system operator would be in a better position to avoid this situation through a redispatcher.

#### **IV      SALE OF MONTANA POWER COMPANY'S GAS AND ELECTRIC SYSTEM** **CONT'D**

##### ***Perspectives from the Public Service Commission; Consumer Counsel***

COMMISSIONER ANDERSON stated that the vision for implementing SB 390 has been delayed many times. The procedural schedule is in place for the Tier II phase of restructuring and the MPC's revised Tier II filing is due on May 5<sup>th</sup>. Dividing the industry into the supply and delivery components will result in upward pressure on supply. On a long term basis, competition should drive the price. On the delivery side, prices will remain stable. The sale will not affect the price if the PSC is able to hold the line. The PSC's goal is that there should be no degradation in the quality of service, including reliability, and no increase in the rates as a result of the sale. The PSC is indifferent as to who owns the stock. They do care about who manages and operates the company, and that it is a competent company that performs under the law. The authority of the PSC is inferred under Montana law. The PSC has exerted that jurisdiction many times. An example is the PacifiCorp sale to Flathead Electric and also the US West merger with Qwest.

The MPC has conceded that the PSC has jurisdiction over the fitness of the buyer. Would this include a possible rate increase? If the buyer pays a premium, should this be a part of the fitness consideration by the PSC? If the company pays too much, they will be looking for a rate increase. If the rate increase is

not granted, service could be cut or the company could be financially unstable. If the PSC took this approach to the scope, this could lead to litigation.

If the sale was approved and the company paid more than book value, it could then come to the PSC for a rate increase. The company could maintain they need the rate increase due to the price they paid for the business. The PSC could say that the ratepayers should not have an increase because of the sale. The company could hold that the heart and soul of utility regulation is in the takings clause of the Constitution. If the company is unable to recover their investment they might hold that the decision would constitute a taking and litigation could follow.

If the buyer paid less than book, the PSC could hold that a rate decrease was necessary. The company might hold that it could not be forced to do so. Litigation could ensue following this scenario.

Because the PSC's authority is not explicit, the Commission adopted a resolution that supports the idea of the legislature clarifying their authority over this transaction. The process and the outcome would be same, but it would not be challenged in court on the subject of the PSC's authority.

SEN. LYNCH remarked that there has been comment that a rate increase would be automatic if an entity paid more than book value. An entity could bid double if that entity was assured that the difference in book price and sales price would be absorbed by the ratepayers. COMMISSIONER ANDERSON stated the rate increase is not automatic and could be challenged.

SEN. DOHERTY noted that the Wyoming statute holds that, "No reorganization of a public utility shall take place without prior approval by the PSC. The commission shall not approve any proposed reorganization if it finds after public notice an opportunity for hearing that the reorganization will adversely affect the utility ability to serve. Reorganization means any transaction regardless of the means by which it was accomplished results in the change in ownership of a majority of the voting capital stock or

the ownership control of any entity which owns or controls a majority of the voting capital stock of the utility."

COMMISSION ANDERSON stated that there are two items considered. One is the event that triggers the review and the other is the criteria to be used in reviewing the event. Public interest is traditional in rate making and it is determined on a case-by-case basis based on the merits of the case and interested parties.

MR. FARR questioned whether the PSC has looked at other interstate combination of utilities to gauge what has happened with respect to those acquisitions on the acquired company and the ratepayers of those jurisdictions and whether the acquiring company was able to increase rates to reflect premiums on the acquisition. COMMISSIONER ANDERSON remarked that they have not reviewed this in detail.

MR. FARR questioned how two competing companies would be evaluated. COMMISSIONER ANDERSON noted that the MPC would make its own decision and then the PSC would review the fitness of the company. In that review, the PSC would look at the history of the company, a package that kept the personnel and management in place, a bond rating and financial capability to operate, etc.

MR. BARTLETT remarked that the review contemplated is what the MPC would expect under existing law. He questioned what problem the PSC was trying to solve by asking the legislature for more authority.

COMMISSIONER ANDERSON raised a concern about litigation that would follow challenging their authority.

SEN. DOHERTY questioned whether the PSC was preparing draft legislation. COMMISSIONER ANDERSON stated that they were in the process of drafting legislation.

SEN. DOHERTY requested that the information be provided in advance of the Special Session. **Robin McHugh, PSC**, stated that with the Commission's direction the draft legislation could be prepared in a short time frame.

**Mr. Haffey** insisted that the statute is clear in that the PSC has the authority to insure on behalf of the state that a successor owner is ready, willing, and able to provide reliable and safe service into the future.

SEN. DOHERTY questioned whether the MPC would agree to forego any legal challenges to the jurisdiction of the PSC to review fitness. He further questioned whether a potential purchaser could be bound to such a promise on the question of jurisdiction. **Mr. Haffey** noted that they could not bind a buyer and they would not forego any right under the laws to challenge any issue. They still maintain that they have an obligation to ensure that a qualified buyer is ready, willing, and able to provide service into the future as a utility company but is also financially viable, able to close the deal, has a reputation for fair dealing, etc. The public interest is addressed under the current law.

REP. PECK stated that as a member of the legislature he has a responsibility to the public agency that has taken the position that the law needs to be clarified that is greater than his responsibility to the MPC.

*Comments from Large Customer Group*

MR. QUANDER remarked that the MPC is proposing to take hundreds of millions of dollars out of the Montana economy and invest it elsewhere. This is a very large economic development issue for the state. If the legislature does not clarify the authority of the PSC before the sale occurs, the state will not have a second chance to address this issue. The MPC plans to complete the sale in six to twelve months. The PSC and Montana Consumer Counsel have consistently insisted that the PSC has implied authority that may allow them to address the issue. The authority and criteria are not clear and this is an invitation to litigation. At the PSC meeting last week, representatives of the MPC stated that the company believes there is no fundamental difference between a private business and a public utility when it comes to considering gain from the sale. They disagree. There are some important differences.

MR. QUANDER presented his written summary, **Exhibit 5**. It is important that the PSC has the authority to review the sale, conduct a hearing involving evidence on the issue, and make a reasoned decision in the public interest. They are not confident that the law allows this type of overview.

SEN. SPRAGUE noted that a buyer should be very interested in clarification of the current law. MR. QUANDER commented that it would depend on the buyer. The Cooperatives are not subject to PSC jurisdiction. This is a potential problem and uncertainty. Some buyers would need to know in advance whether the PSC would bless a particular sale. For example, the MPC is negotiating to buy down the qualifying facilities contracts. They have asked the Commission to look at the potential buy downs and give them a signal before they complete the deal. They like the certainty of knowing how this will be treated before they move forward. On the other hand, there may be buyers who are willing to go with the assessment that there is value to be had and they are willing to take the chance that enough money can be made and they may not need to ask the PSC for an increase.

MR. WHEELIHAN remarked that if the Cooperatives were interested in purchasing regulated assets, they would expect that the PSC would have to bless the acquisition.

REP. JOHNSON asked MR. QUANDER if he had prepared any draft legislation. MR. QUANDER explained that he had reviewed comparable statutes from other states that could be used to draft a statute in Montana. If there is interest in proceeding, they would be interested in preparing draft legislation.

COMMISSIONER ANDERSON commented that PacifiCorp advertised that they had made a deal with Flathead Electric and declared their intention to leave the state and that they would no longer be subject to the laws or jurisdiction of the PSC or any other state law. At the time, PacifiCorp had its transition plan before the Commission and there were issues about stranded costs. PacifiCorp planned to close the deal and leave the state without resolution of the case. The Consumer Counsel and the PSC hastily went to court and asked for an injunction to prevent the sale from closing pending the outcome of the case. The court agreed. The parties worked together and negotiated a settlement. The settlement involved a sharing of the money. In signing the settlement and agreeing to carry out its transition cost before the Commission, PacifiCorp reserved its right to challenge the PSC's jurisdiction over the matter. That challenge is still in effect today. Pending the final order of the Commission, PacifiCorp may challenge the PSC's jurisdiction.

MR. NELSON added that there was no ruling that the Commission had jurisdiction. The district court issued a temporary restraining order to preserve the status quo pending resolution of the issue.

CHAIRMAN THOMAS noted the letter from Bob Gannon, MPC, **Exhibit 6**, in which he stated that they would expect the PSC to review and approve their sale. He asked MR. QUANDER what further action they would like to see taken by the PSC. MR. QUANDER explained that the unanswered question is the scope of the review. The scope of that review may include potential direct or indirect impacts on rates. He believes that MPC's view of the PSC's scope is much narrower and does not extend to any authority to condition an approval or disapproval of a sale before it has occurred or to condition a sale upon any allocation or sharing of net gains among ratepayers or shareholders. The vast majority of states require utilities to obtain approval for a sale. The PSC usually makes a determination as to the general public interest. This usually does not involve an approval or disapproval of the price alone.

CHAIRMAN THOMAS asked what process would be followed by the PSC in regard to the sale. COMMISSIONER ANDERSON explained that the MPC and the buyer would jointly file their documents with the Commission. The filing would be noticed to the public and parties would be able to intervene. A procedural conference would be convened and all the usual steps of a contested case would be followed. This would lead to an evidentiary hearing for the purpose of developing a record whereupon the PSC would render a decision based on the record in the case.

CHAIRMAN THOMAS questioned what authority would need to be clarified in the current law. COMMISSIONER ANDERSON explained they believe that they have the responsibility and the authority to review this transaction and make a finding based on the public interest to include the quality of

service and rates. Because this is not explicit in the law, it is more likely the outcome will be challenged based on the process. The party that does not like the outcome will challenge the Commission's authority to have reached the conclusion. The law needs to list the events that the Commission shall review and the criteria for that review.

CHAIRMAN THOMAS asked **Mr. Haffey** if he disagreed. **Mr. Haffey** agreed that the PSC has all the authority that is needed to insure that going forward the successor owner of the utility company can provide safe and reliable service. That is the authority the Commission has on the state's behalf. The MPC is getting out of the utility business in Montana. They do not want to do anything that could be perceived as taking the money and running. They are making a prudent business decision for both their energy businesses and their telecommunications business. In doing that they have a responsibility to bring to the state an entity that is fully able to provide utility service in the future. If they were liquidating through an asset sale, the state would not and should not have any call or want to reach into the proceeds. The proceeds should go to the investors who took the risk in the business. Case law across the country applying specifically to utility businesses where the corporation exited the utility business holds that the proceeds go to the investors.

## **V      STATUS REPORTS**

### ***Tier II Transition Plan Proceedings at the PSC***

COMMISSIONER ANDERSON remarked that the case is proceeding. The MPC proposed a tracking mechanism with which the Commission disagreed. The procedural schedule has been reinstated and the MPC is supplying information on the case.

### ***Qualifying Facility Contracts***

MR BARTLETT provided a listing and general information regarding the qualifying facilities, **Exhibit 7**. Other than the Montana One contract, the other QF contracts are considerably smaller. They have letters of intent to buy down the contracts.

### ***Montana Electricity Buying Cooperatives Appeal of BPA Decision***

MS. HADLEY reported that the Montana Electricity Buying Cooperatives did file a notice of intent to appeal the BPA decision. The appeal was filed last month. The Cooperative is looking for partners and support.

### ***Universal System Benefits Programs***

MR. WHEELIHAN reported that in the year ending 1999, the Cooperatives collectively spent 2.9% of their target and 19.9% of the funding was for the low income component. There was a total expenditure of \$4.5 million, which is approximately \$890,000 more than they were required to spend.

MR. BARTLETT stated that the MPC customers funded approximately \$8 million worth of programs. A written report has been mailed to all TAC members.

MR. QUANDER added that on MPC's system approximately \$2.6 million was associated with large customer payments. With the exception of \$100,000, the funds were self directed by the large customers. Approximately \$140,000 was directed to qualifying low income energy assistance programs and the remainder was invested in qualifying energy efficiency projects.

#### ***PSC Rules & Consumer Committee Principles Regarding Default Supply***

COMMISSIONER ANDERSON noted that the Commission had an aggressive schedule for rule making in regard to default suppliers. The BPA standards for service precluded the small buyers cooperative from participating in the prescription proposal. As a result of this decision and the widespread disagreement among the parties regarding default supply, the Commission has abandoned the aggressive schedule. Due to staff resource limitations, the rule making process is currently on a slower track.

#### ***Legislative Council on River Governance***

SEN. DOHERTY reported that a meeting was held in Whitefish the weekend of April 14-16. The primary focus of the meeting was a preliminary report under the auspices of Oregon Senator Gene Derfler, Majority Leader of the Oregon Senate. This is a 60-page document that reviews the BPA and power supply in the Pacific Northwest as an opportunity with options from following the status quo to the states forming a compact and buying the BPA. Concurrent with the power issues there are fish issues which involve recovery of certain salmon species in the Columbia River. He raised a concern that the report had not received any public hearing in any state. Consumer groups, fish advocates, and the Tribes were not represented in the drafting of the report. He recommended that prior to the next meeting, the report be distributed and public input be requested.

MR. MALY added that summary minutes and a copy of the report would be made available to anyone requesting the same.

SEN. DOHERTY suggested that public hearings be held regarding this issue. CHAIRMAN THOMAS stated that a Subcommittee of the TAC could work with this issue.

## **VI ADMINISTRATIVE MATTERS**

### ***Adoption of Minutes***

**Motion/Vote: SEN. SPRAGUE MOVED THAT THE MINUTES OF THE FEBRUARY 17, 2000, TAC MEETING BE APPROVED AS WRITTEN. THE MOTION CARRIED UNANIMOUSLY.**

**VII     ACTION ITEMS**

*Clarify the Authority of the PSC*

**Motion: SEN. DOHERTY MOVED THAT THAT THE TAC PROVIDE A BRIEFING PACKET ON CLARIFYING THE AUTHORITY OF THE PSC TO LEGISLATORS PRIOR TO THE UPCOMING SPECIAL SESSION.**

**Discussion**

REP. DELL requested that the briefing paper be condensed and present both sides of the issue.

MR. NELSON stated that the Montana Consumer Counsel has prepared two memos on the issue. One memo contains information regarding an asset sale and jurisdiction issues. The second memo includes jurisdictional issues in the context of a stock transaction. These documents will be made available to the TAC.

SEN. DOHERTY further requested that any draft legislation be included. He added that until there is a call for expansion of the Special Session, Legislative Council staff would not be able to draft legislation.

MR. QUANDER requested that information from the large industrial groups be included in the packet.

MS. HADLEY stated the MEBC would also be interested in providing information and draft legislation for the packet.

MR. MALY questioned how many of the possible legislative changes should be included in the packet of information being provided to legislators.

The Committee decided to prepare a packet specifically addressing the issue of PSC authority.

MS. HADLEY stated that the MEBC is the only entity not allowed to submit a proposal to purchase MPC because they are not allowed to own poles and wires. According to the rules of the BPA, they are

also not allowed to receive preference power. If they had the ability to partner with other cooperatives, they may be able to have Montanans participate in the buyout process.

**Vote: THE MOTION CARRIED.**

## **VII    NEXT MEETING**

The next meeting was set for June 23<sup>rd</sup>. Tentative agenda items include: Legislative Council on River Governance, default supply, and possible legislative changes.

## **IX    ADJOURNMENT**

There being no further business, the meeting was adjourned.

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Sen. Fred Thomas, Chairman

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